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18 FACEBOOK, INC.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

17 MAXIMILIAN KLEIN, SARAH
18 GRABERT, AND RACHEL BANKS
19 KUPCHO, on behalf of themselves and all
20 those similarly situated,

21 Plaintiffs,

22 v.

23 FACEBOOK, INC.,

24 Defendant.

Case No. 5:20-cv-08570-LHK

**DECLARATION OF AARON M. PANNER
IN SUPPORT OF FACEBOOK'S MOTION
TO DISQUALIFY KELLER LENKNER LLC**

Date: September 30, 2021

Time: 1:30 p.m.

Ctrm: 8

Judge: Hon. Lucy H. Koh

DECLARATION OF AARON M. PANNER

I, Aaron M. Panner, declare as follows:

1. I am a partner at Kellogg, Hansen, Todd, Figel & Frederick (“Kellogg Hansen”). I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.
2. Facebook engaged Kellogg Hansen in October 2019, to represent the company in connection with antitrust investigations launched by the Federal Trade Commission and a group of State Attorneys General. Both investigations were underway prior to our retention in the matter. Kellogg Hansen’s role was to assist in representation of the company during the investigations, to assist in advocacy before the enforcement agencies, and to serve as lead counsel in possible litigation against the FTC and State Attorneys General. The FTC and a group of State Attorneys General brought separate antitrust actions against Facebook in December 2020; Kellogg Hansen represents Facebook as lead counsel in both actions.
3. I am one of the attorneys on the Kellogg Hansen team representing Facebook in the above-referenced government antitrust litigation. I have represented Facebook in connection with various matters since 2012 and have been actively involved in Kellogg Hansen’s representation of Facebook since the firm was retained in connection with the investigations that preceded the filing of the complaints.
4. While representing Facebook in these matters, I supervised then-Kellogg Hansen associate Albert Pak. Mr. Pak was a valued member of the Facebook team and did excellent work on the Facebook matter, as well as other matters in which I was involved, during his time at Kellogg Hansen. Mr. Pak directly assisted me in connection with various matters connected to the government antitrust investigations and preparation for possible litigation; I had dozens of conversations with him about pending projects and legal and factual issues in the investigations and that would likely arise in the event of litigation. In connection with the preparation of this declaration, I have reviewed Mr. Pak’s time entries to refresh my recollection concerning his work with me and the scope of his work in the matter overall. My review of those records confirmed my recollection that Mr. Pak was

1 significantly involved in our work for Facebook in both the investigations and in
2 preparation for litigation.

3 5. Starting in December 2019 until immediately before he left the firm in late June 2020, Mr.
4 Pak was heavily involved in Kellogg Hansen's work on the government antitrust
5 investigations and in preparing for the possible litigation. He attended team meetings in
6 which Facebook's legal strategy was discussed; reviewed memoranda that discussed
7 Facebook's legal strategy; wrote legal memoranda concerning issues of potential relevance
8 to Facebook's defense; participated in fact-gathering for witness interviews of witnesses
9 who were deposed during the government investigation; did substantial work with
10 consulting and potential testifying experts on issues likely to be significant in the litigation;
11 analyzed and reviewed Facebook's document productions; and helped Facebook respond
12 to one of the FTC's civil investigative demands.

13 6. Of particular significance, Mr. Pak was assigned to help me lead our work with consulting
14 and potential testifying experts. In that capacity, Mr. Pak was privy to all of the expert
15 teams' pending projects and discussions among counsel and expert teams regarding
16 defense strategy.

17 7. Through this work, Mr. Pak was privy to Facebook's confidential and privileged
18 information and also Facebook's strategy in the event of litigation. He participated in many
19 meetings in which Facebook's in-house counsel participated and interacted with those
20 lawyers directly. A substantial portion of his work consisted of analyzing Facebook's
21 sensitive information to assist Facebook in responding to the government investigations
22 and preparing for subsequent litigation. In addition, it is the culture of our firm to be
23 inclusive and to provide significant leadership opportunities to younger attorneys;
24 consistent with those commitments, we widely shared information and strategic
25 considerations with all lawyers who were working on the investigations and preparing for
26 potential litigation, including Mr. Pak. For example, my partner, Mark Hansen, who is
27 lead counsel for Facebook in the litigation against the FTC and state Attorneys General,
28 sent emails to a mailing list that included Mr. Pak on a daily basis in which he shared his

1 thinking on legal and trial strategy and forwarded documents and analysis from the client
2 and counsel at other firms assisting Facebook on the investigations and potential litigation.

3 8. Mr. Pak billed 824.5 hours between December 11, 2019, and June 24, 2020, working on
4 the government antitrust investigations of Facebook. This was approximately three-
5 quarters of the time he billed during this period of his employment at the firm.

6 9. In late June 2020, Mr. Pak informed Kellogg Hansen that he would be leaving the firm and
7 joining Keller Lenkner LLC. Mr. Pak's last day at Kellogg Hansen was June 26, 2020.

8 10. At the time Mr. Pak left Kellogg Hansen, I was unaware that Keller Lenkner was
9 conducting any antitrust investigation of or contemplating any litigation against Facebook.
10 To my knowledge, Kellogg Hansen did not receive any notification from Keller Lenkner
11 concerning the conflict of interest created by Keller Lenkner's employment of Mr. Pak,
12 nor did it receive any notification from Keller Lenkner regarding what screening
13 procedures (if any) Keller Lenkner employed to protect Facebook's privileged and
14 confidential information.

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16 I declare under penalty of perjury that the foregoing is true and correct. Executed on this 7th day
17 of May 2021 in Bethesda, MD.

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19 By: /s/Aaron M. Panner
20 Aaron M. Panner
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SIGNATURE ATTESTATION

I am the ECF User whose identification and password are being used to file the foregoing.
Pursuant to Civil Local Rule 5-1(i), I hereby attest that the other signatories have concurred in this filing.

Dated: May 7, 2021

By: /s/Sonal N. Mehta
Sonal N. Mehta